

**Billing Code 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[\[FWS-R5-ES-2011-N174\]](#)

**[50120-1112-0000-F2]**

**Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Karner Blue Butterfly and Frosted Elfin from National Grid**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of draft environmental assessment, receipt of application, and habitat conservation plan.

**SUMMARY:** Pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) the U.S. Fish and Wildlife Service (Service or “we”) announce the availability of an application for an incidental take permit and the associated habitat

conservation plan (HCP) from National Grid (NG), Syracuse, New York, and draft environmental assessment (EA) for public review and comment. We received the permit application from NG for incidental take of federally listed Karner blue butterfly (*Lycaeides melissa samuelis*) and unlisted frosted elfin (*Callophrys irus*) (should this species become listed in the future) over the next 50 years during operations, maintenance, and construction activities associated with electric and natural gas facilities within portions of Albany, Oneida, Schenectady, Saratoga, and Warren Counties, New York. We prepared a draft EA that describes the proposed action and possible alternatives and analyzes the effects of alternatives on the human environment.

We provide this notice to: (1) seek public comments on the proposed HCP; (2) seek public comments on the scope of issues and alternatives considered in the draft EA and our consideration as to whether the draft EA supports a Finding of No Significant Impact under NEPA; and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare a final EA.

The proposed HCP and EA are being made available during a 60-day comment period.

To ensure consideration, we must receive your written comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments by U.S. mail to Robyn Niver, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045; by

facsimile at 607-753-9699; or by electronic mail at robyn\_niver@fws.gov. In the subject line of your letter, facsimile or electronic mail, include the document identifier: NG HCP.

**SUPPLEMENTARY INFORMATION:**

We received a permit application from NG for incidental take of federally listed Karner blue butterfly (*Lycaeides melissa samuelis*) and unlisted frosted elfin (*Callophrys irus*) (should this species become listed in the future) over the next 50 years during operations, maintenance, and construction activities associated with electric and natural gas facilities. A conservation program to minimize and mitigate for the incidental take would be implemented by NG as described in the draft NG HCP.

We prepared a draft EA to comply with the NEPA. The Service will evaluate whether the proposed action, issuance of an incidental take permit to NG, and other alternatives in this draft EA are adequate to support a Finding of No Significant Impact.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6).

We are requesting comments on the proposed HCP and our consideration as to whether the draft EA supports a Finding of No Significant Impact under NEPA.

*Availability of Documents*

The proposed HCP and draft EA are available on the New York Field Office's (NYFO) website at: <http://www.fws.gov/northeast/nyfo/es/kbb.htm>. Copies of the proposed HCP and draft EA will be available for public review during regular business hours at the NYFO (see ADDRESSES). Those who do not have access to the website or cannot visit our office can request copies by telephone at 607-753-9334 or by letter to the NYFO (see ADDRESSES).

### *Background*

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations (October 1, 2006, 50 CFR 17.22; October 1, 2001, 50 CFR 17.32).

NG is seeking a permit for the incidental take of Karner blue butterfly (*Lycaeides melissa samuelis*) and frosted elfin (*Callophrys irus*) (should this species become listed in the future) for a term of 50 years. Incidental take of these species may occur in patches of habitat within approximately 56.1 miles of electric transmission line

right-of-way (ROW), 52.9 miles of electric sub-transmission line, 42.32 miles of gas lines located in ROWs, and 8.41 miles of distribution line ROW (covered lands) within portions of Albany, Oneida, Schenectady, Saratoga, and Warren Counties, New York. Where multiple electric lines are located parallel in the same ROW, the length has only been counted once. Where a gas pipeline is located adjacent to an electric transmission line, both lengths have been counted. An additional 28 acres of mitigation lands are also included as covered lands. The covered activities may result in the permanent loss of 3.5 acres of occupied habitat and periodic temporary disturbance of 29.3 acres of occupied habitat during the term of the permit.

Proposed covered activities include operations, maintenance, reconstruction, and new construction of electric transmission, sub-transmission, and distribution structures and substations, as well as underground natural gas pipelines and associated aboveground gas regulator stations and valve sites.

The HCP's proposed conservation strategy is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to complement the existing conservation efforts in New York State for the butterflies by (a) focusing mitigation/restoration/enhancement efforts within the Albany Pine Bush and Queensbury viable butterfly populations where corridor connections can be made and larger habitats of wild blue lupine can be developed; (b) working with non-governmental organizations in the area with an interest in protecting butterfly habitat; (c) avoiding and minimizing negative effects and actions; (d) promoting education and outreach; and e) ensuring that the amount of habitat for the covered species within the covered lands does not drop below the 2006 Baseline Survey acreage.

The HCP provides a mechanism to supply funding for a full range of conservation measures targeting the butterflies and the ecosystems that support them. Conservation measures proposed include implementation of avoidance and minimization measures to ensure continued existence of the butterflies within the covered lands, creation of a 5-acre, off-ROW preserve, and creation and/or enhancement of up to 23 acres of ROW habitat. Additionally, and although not required, NG will be proactive and conduct enhancement measures above and beyond the regulatory requirements that should result in the ultimate creation and promotion of habitat within strategically selected ROW areas of the covered lands.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP. Two other alternatives to the proposed action were considered in the HCP: no action (i.e., the incidental take permit for Karner blue butterfly and frosted elfin would not be issued and the HCP would not be implemented), and avoiding or reducing the performance of infrastructure repairs and replacements. However, these two alternative actions were eliminated from further consideration, due to logistical and public safety considerations, and the associated regulatory and business-related obligations to continue providing reliable electricity and natural gas service to NG's customers. NG has developed an implementation agreement (IA) that ensures proper implementation of each of the terms and conditions of the HCP and describes the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks. The IA is being included with the proposed HCP for public review.

*National Environmental Policy Act*

In compliance with the NEPA of 1969, we analyzed the impacts of implementing the HCP, issuance of the permit, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by issuing the incidental take permit. We have prepared a draft EA on this proposed action and have made it available for public inspection online or in person at the NYFO (see ADDRESSES).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives that were derived from discussions with NG during the development of the HCP. We evaluated a no action alternative (do not issue a permit, status quo), the proposed action, (issue the permit and implement the HCP) and one other alternative that limits the mitigation activities to areas of impact.

#### *Next Steps*

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

*Public Comments*

The Service invites the public to comment on the proposed HCP and draft EA during a 60-day public comment period ending on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments can be submitted to the NYFO (see ADDRESSES). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you may request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Date: August 11, 2011

/s/ Kenneth Elowe

Kenneth D. Elowe, Acting Regional Director, Region 5

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[FR Doc. 2011-26793 Filed 10/18/2011 at 8:45 am; Publication Date: 10/19/2011]